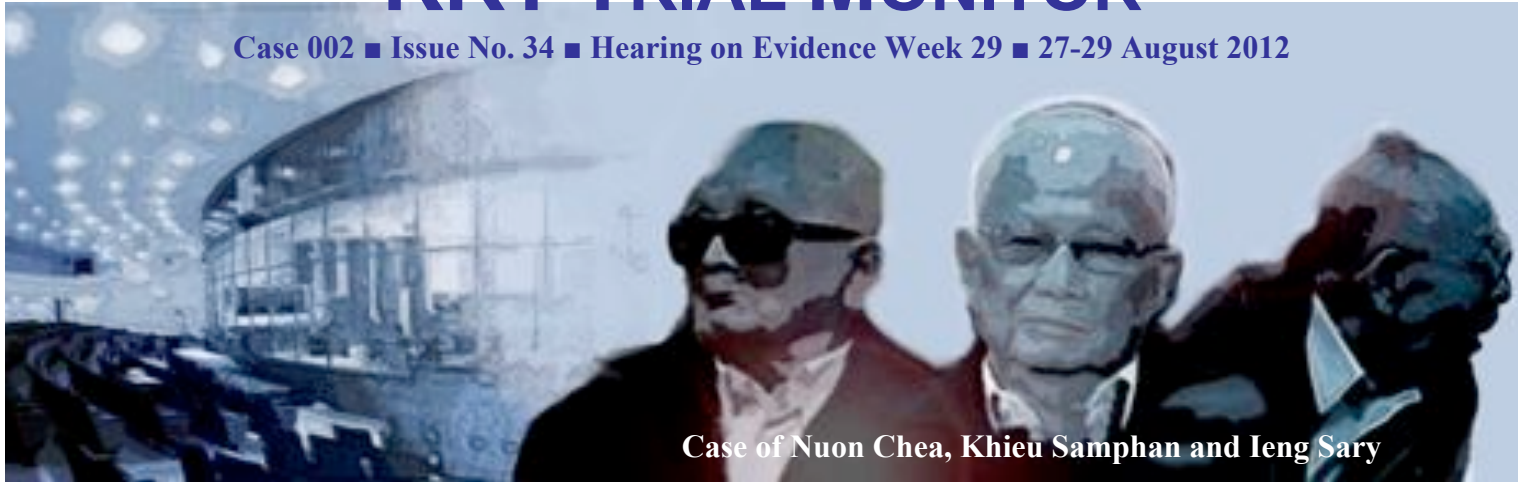


KRT TRIAL MONITOR

Case 002 ■ Issue No. 34 ■ Hearing on Evidence Week 29 ■ 27-29 August 2012



Case of Nuon Chea, Khieu Samphan and Ieng Sary

Asian International Justice Initiative (AIJI), a project of East-West Center and UC Berkeley War Crimes Studies Center

*The Party paid greater attention to obeying the discipline
rather than paying great attention to human beings or their lives.*

- Civil Party Em Oeun

I. OVERVIEW

Mr. Em Oeun, the third Civil Party to testify in this case, continued his testimony this week. The Defense Teams probed seeming inconsistencies in his testimony, such as the dates and chronology of events he recounted. They also asked about aspects of his medical training background, in light of testimony that was apparently inconsistent with information he had provided on his Victim Information Form. At the end of his testimony, he reasserted the truth of his statements, and pleaded for understanding for his confusion. The Trial Chamber then called in a new witness, Mr. Norng Sophang, the head of a telegram translation unit in Phnom Penh during DK. He provided an interesting account of the highly-secretive communications process between lower levels and the KR leaders, as well as the administrative structure of the telecommunications sector at that time.

The hearing on evidence for Case 002/01 adjourned on Wednesday to give way to the fitness to stand trial hearing of Ieng Thirith on 30 and 31 August 2012.

II. SUMMARY OF WITNESS TESTIMONIES

This week, the OCP and the Defense Teams examined Civil Party Em Oeun. The OCP's questions sought to clarify Em Oeun's testimony, particularly on the administrative structure of the Khmer-Soviet Hospital, the arrests conducted there, and the political training at Borei Keila, where the Accused gave lectures on CPK policies. The Defense Teams, on the other hand, scrutinized his responses and emphasized contradictions in his statements.

The next witness, Norng Sophang, began his testimony with questions from Prosecutors Veng Huot and Tarik Abdulhak, who touched on his early years in the revolution before seeking elaboration on his experiences as a telegram encoder and decoder for the CPK.

A. Em Oeun's Testimony

Inspired by his father, Em Oeun said he voluntarily joined the revolution in 1969.¹ He started as a messenger for leaders like Sao Phim,² and later served as a physician for Sector 20 and trained at the Khmer-Soviet Hospital during DK. Around 1978, he fled to the jungle with his wife to escape the regime.

1. Medical Background and Role during DK

According to Em Oeun, he returned to Cambodia from his training in Vietnam before April 1975 and worked as a doctor in Sector 20, which was already a liberated zone at that time. During the DK regime, the Civil Party was sent to Phnom Penh for a one-year medical training program in the Khmer-Soviet Hospital, where Thiounn Thioeunn appointed him president of the students' group. Due to an outbreak of an epidemic, however, his training lasted for only nine months and he resumed work in his sector.

At Sector 20, Em Oeun reportedly performed responsibilities as a member of the Youth League of the sector and as a general physician. He provided medical training, giving instructions on hygiene and sanitation, as well as on medical skills and ethics. Em Oeun added that he also inspected hospitals at communes, admitting that at this level, people used "rabbit pellet" because there was no proper medicine. He reiterated that trainees at the military hospital of Sector 20 observed medical experiments on people condemned for execution. He detailed that "fingers were cut and removed, their flesh were dissected and removed." This was done before trainees could operate on other people. However, the Civil Party adamantly maintained that he was a mere observer in these procedures. When pressed on the identity of the person who invited him to these medical experiments, Civil Party was initially reticent but later named the Sector's hospital head, Ta Ut, as the person responsible for the operations.

Both the Nuon Chea and Ieng Sary Defense Teams questioned the discrepancies between Em Oeun's testimony that he had been trained in medicine since he was 10 years old,³ and an entry on his Victim Information Form, which stated that, "in 1975, I was assigned to work as a medic to treat people, although I had *no medical background*." The Civil Party clarified that he had declared he had no medical background because he was never formally trained in medicine, he only "learned on the job." He said that he acquired his skills informally, but his training was "never recognized by the State." Ieng Sary international counsel, Mr. Michael Karnavas, persisted on this issue, pointing out other incongruities between the Civil Party's statements and his Victim Information Form, highlighting his medical training in Vietnam for a period of three years, and asserting that the Civil Party had, in reality, a total of 13 to 14 years of medical experience, contrary to his claim that he had "no medical background."

2. Administrative Structures during DK

Em Oeun only provided a scant description of the administrative structure of Sector 20 in the East Zone, where he worked as a physician. He identified a certain Khoem as the Sector 20 secretary and Ta Ut as the head of the hospital.

The Civil Party gave more information on the Khmer-Soviet Hospital (also called the 17 April Hospital), the party's hospital, which was under the supervision of the Ministries of Social Affairs and Health. The hospital was reportedly divided into sections based on various fields of specialization, such as surgery, gynecology, and dentistry. Each section had a director. There was one building for the party members and cadres, and another building for trainees.

Further, he stated that Thiounn Thioeunn was in charge of “health affairs” and was the head of the school in the hospital. Leng Sei (Tiv Ol’s wife), on the other hand, was the director of the hospital and a medical and political trainer for the students.

3. Medical Training during DK

According to Em Oeun, training at the hospital had two aspects: political and technical. The purpose of political training was to help trainees understand their roles and responsibilities to the party and “to follow the lines of the ‘great leap forward’ of Communism.” The technical training part, on the other hand, focused on the study of medicine and ethics. Em Oeun said that since the training was strict and rigorous, trainees isolated themselves from social interaction and never talked to each other because they were all afraid to make mistakes. The medical training was taught during the treatment of patients, rather than based on theory. The Civil Party affirmed that Thiounn Thioenn, as well as Korean and Chinese doctors, provided them with proper medical training. The training program was for one year, after which, the trainees worked as doctors in the hospitals of their respective sectors or zones.

The party reportedly called approximately 1,000 people from across the country to train at the Khmer-Soviet Hospital. The trainees were mostly members of the Youth League. While Em Oeun said he was not aware of the qualifications for admission as trainee, he knew that many trainees were children of cadres.

4. Political Training at Borei Keila

Em Oeun testified that Pol Pot, Nuon Chea, Khieu Samphan, and other DK leaders presided over several political training sessions in Borei Keila. The leaders were on the stage and were introduced to the participants at the start of the session. Following Pol Pot’s opening presentation, Nuon Chea, Khieu Samphan, and the other leaders followed, commenting briefly on the previous speaker’s topic before proceeding to his own presentation. The Civil Party said that according to Sao Phim and his father,⁴ Pol Pot was the Secretary, Nuon Chea was the Chairman of the People’s Representative Assembly, and Khieu Samphan was the President of the State Presidium. Heads of districts and representatives from sectors and zones participated in the training session.

Em Oeun said that he was not sure if leng Sary was present in the training session when Karnavas asked him. In response, counsel proceeded to read out the Civil Party’s various statements enumerating the leaders in the Borei Keila training, none of which mentioned leng Sary. However, when pressed on this matter, Em Oeun declared that he indeed saw leng Sary at the training very briefly.

The Nuon Chea and Khieu Samphan Defense Teams sought to clarify the date the Civil Party attended the political training in Borei Keila because previously, he had testified that it was in late 1977, but subsequently he said it was in late 1976 or early 1977. When confronted by defense counsels, he maintained that the meeting was in July 1976.

5. CPK Policies

Em Oeun described the CPK’s rule as a “dictatorship” because decisions handed down by the CPK leadership had to be obeyed by the lower levels. “Whatever the party said, whatever the party decided, we had to comply with that decision; we must not protest.” He also added that, “anyone who resisted the decision of the party would be considered a traitor.” Notably, he also stated that “the party’s policy before 1975 was decent enough for us to work for, however, I became surprised by the change of policy after the fall of Phnom Penh.”

a. Perceived Enemies

During the Borei Keila political training, the leaders discussed the concept of enemies extensively.⁵ According to Em Oeun, individuals who failed to follow orders or perform their tasks well to contribute to the “the Great Leap Forward” were perceived as enemies or traitors, and later smashed. The party did not care about family relations, only about the effective implementation of its policies.

The Civil Party testified that, throughout the DK regime, the party was very vigilant against “enemies burrowing from within,” as they were “invisible” and were considered serious threats. This was why there was a “sense of mistrust” within the party. He further recalled that, in a speech, Nuon Chea mentioned Koy Thuon, Keo Meas, and Chan Chakrey (the commander of the army), as examples of party betrayers and asked people not to follow their footsteps; otherwise they would be considered traitors, and executed. To uncover the “infiltrators” of the revolution, Khieu Samphan reportedly stressed the need “to pay special attention to the ‘new people’, who were steeped in feudalism.” The leader advocated the need to make the new people “work more, eat less, and rest less,” a statement that Em Oeun said terrified him.

The Civil Party also mentioned circulars identifying enemies who were handed down from “870.” “Members in the party were powerless;” they had to obey the circulars from 870, he stated. These circulars were applied in different levels. From the ministry, to the village or cooperative level, they had to be strictly implemented. Em Oeun noted that a circular from 870 vested leaders of cooperatives with the power to arrest and kill people.

b. Arrests

Em Oeun recounted witnessing the arrest of Leng Sei, who he said was arrested, stripped naked, and tossed in a truck. He also testified that he witnessed the arrest of medical doctors and trainees, who were taken away on trucks. Pauw confronted Em Oeun with his testimony (during the OCP’s examination) where he said, “I never saw it by my own eyes, of the trucks taking away the people who were arrested.” In response, the Civil Party explained that he never saw people carried out in hospital trucks or ambulances, but he saw people taken away by a military truck.

c. Religious Persecution

According to the Civil Party, the CPK “had an intention to oppose religion because they never valued the importance of religion in society.” He said that, based on study sessions beginning 1972, leaders had indoctrinated people to disregard “pagoda’s affairs.” Leaders reportedly exhorted that “it was a waste to ordain a person into monkhood.” The Civil Party emphasized, however, that the harsh treatment against religions began only in 1975.

6. Witness Demeanor and Credibility

Em Oeun appeared to have been confused with the dates and chronology of events in his testimony and statements in his Victim Information Form.⁶ For example, he provided different dates relative to the political training in Boreo Keila (1975, 1976 and 1977) before finally asserting that it occurred in July 1976. He also ascribed different years for his father’s disappearance (1974, late 1975 and 1977). While he clarified later that it was in late 1974, the inconsistency affected some of his statements and the chronology of events where his father was still alive. When persistently pressed on the matter, Em Oeun repeatedly asserted the truth of his statements, although admitting confusion:

My apologies, I rely heavily on the truth and I would like to once again apologize for not being able to recollect the facts in good sequences. Due to the lapse of time, I cannot recall this very well. Look, I'm now 60 years old or so. Back then, I was about 10 or below 20 years of age, and I had endured a lot of pain and suffering. So my memory has also been deteriorating. And please bear with me for this.⁷

At one point during Karnavas' relentless questioning on apparent inconsistencies in his statements, particularly on his medical background, Em Oeun lost his composure. Looking embarrassed, he vowed, "I would like to swear in the name of God," and broke down in tears. His international counsel, Mr. Kim Mengkhy, interrupted and requested the Chamber to defer the proceedings momentarily to give the Civil Party the time to regain his composure.⁸

It is understandable that with the passage of time, the Civil Party may have the actual dates of events confused. However, as the Chamber itself expressed, there is a need to know the "logical sequence of the dates" to provide the court with an understanding, not of the dates itself, but of the chronology of events in his testimony.

B. Norng Sophang's Testimony

Mr. Norng Sophang (TCW-480) is a 60-year old school teacher from Battambang Province. He was a former cadre who headed a telegram translation section, responsible for decoding and encoding messages to and from the upper echelon. Through his work, he gained relevant insights on the communication structure in DK.

1. Role in the CPK

Norng Sophang recalled that he became involved in the CPK in 1973, when the secretary of the the sector in Preah Vihear, recruited him to work in B-17, where he was initially tasked to grow vegetables. Half a year later, he attended telegram training sessions under a person named Pon. When he mastered the skills for the job in 1974, he became the chairperson of B-20's telegram translation unit under the telegram section.

2. Administrative and Communication Structures in the CPK

The Witness briefly described Offices B-17 and B-20. He also explained the operations of the CPK's telegram section during the revolution and the regime.

a. Offices B-17 and B-20

According to Norng Sophang, B-17 was a place for tempering, located in Bet Thnou Village, Kampong Cham Province. People were sent to B-1 for training and testing their "stance." It was also a production site where vegetables were grown "to support Angkar." The Witness recalled that he saw Pol Pot and Nuon Chea at B-17 when the two leaders inspected the progress of production in the site.

Norng Sophang said that although he worked in B-20, he could not provide details on other offices in it because he stayed mainly in the telegram translation unit in the banana plantation.

b. Telegram Section

The Witness indicated that B-20's telegram section served a vital function in facilitating communications between the bases and the upper echelon both during the revolution and after the liberation of Phnom Penh.

During the Revolution. Although the Telegram Section was located in B-20, it was reportedly an autonomous section and was not under the supervision of B-20's chairman. It had three interrelated but separate units: (i) the telegram translation unit, (ii) the telegram receiving and sending unit, and (iii) the radio broadcasting unit. Norng Sophang stated that people in the three units did not know each other because every individual had to focus on his or her own tasks. In late 1974, the telegram translation unit was split into two locations: (i) the "frontline" to the West of Phnom Penh, where Pol Pot and his instructor Pon worked, and (ii) the "rear" at B-20, where the Witness was stationed and supervised a group of three workers.

After the "Liberation" of Phnom Penh. The Witness said that, when he arrived in Phnom Penh in late 1975, the departments for the telegram decoding sections in the capital were already in place. He disclosed that Pon and a certain Thé both chaired the telecommunications sector of the CPK, and supervised Norng Sophang's telegram translation unit, as well as the radio communication and telegram transmitting units at the old American Embassy. A person named Yuos headed the telegram transmitting unit, K-18, which was responsible for sending and receiving telegrams throughout the country.

The telegram translation unit in Phnom Penh was also divided into two. One was located in K-1 where Pon was in charge, and the other was at Sothearos School headed by the Witness, but still under Pon's supervision. Pon assigned the telegrams that needed decoding and encoding to Norng Sophang, and informed him of the recipients of the messages. The Witness further testified that Pon's unit at K-1 handled telegrams from important locations such as the East Zone, while the Witness decoded messages from areas with "no serious conflicts."

Kinds of Telegram Communications in the CPK. Norng Sophang classified CPK telegrams into two categories: (i) secret telegrams, which required encoding and decoding; and (ii) open messages, which simply used Morse code. He said he communicated with Pon through secret telegrams.

Incoming telegrams from bases, zones, and battlefields were reports frequently addressed to "Angkar." These were reportedly sent through radio communication in secret code. The Witness stated that his unit decoded these telegrams and submitted them to Pon, who forwarded the messages to the upper authority. He frequently saw the name "Pol" or "Office 870" on the salutation line, and occasional telegrams were sent to "Brother Nuon," stated the Witness. Outgoing messages, on the other hand, consisted of circulars and directives from the upper authority to the lower authorities for implementation. Norng Sophang indicated that these documents were in ordinary text and that his unit received them from messengers. His unit encoded the messages, and then forwarded them to the telegram typing unit before dispatch to the targeted areas. The Witness recalled that the directives in these telegrams covered a wide range of subjects including politics, economy, culture, social affairs, and the general situation of the country. Norng Sophang stated that these documents often originated from Office 870, adding that –

As for economic affairs, the person who was responsible at the time was, if I recall correctly, the person handling the materials to be distributed to the base level, and the person who was in charge at that time was Mr. Khieu Samphan.⁹ But for cultural affairs, for example if there was any moral issue among people in society, I believe it was Nuon Chea who was the person in charge. So, once again, there were different portfolios for different people at that time. As for Pol Pot, he was the person who oversaw every sector and every field. He had the right to say anything concerning anyone.

Moreover, he described the process for encoding messages from Office 870, thus:

When the Center Committee needed anything, then Pon would be summoned to take notes when instructions would be wished to send to different zones and sectors. After obtaining the messages, he would then submit them to people at (the) respective unit, for example at K-1, where the text would be then re-decoded. The full message would never be sent straightforward; it had to be converted into secret coding. So, all had to be converted to secret coding. Even at my place, if I was needed for decoding the telegrams, I had to also re-decode into more secret coding. It was several layers of decoding this secret telegrams and it was really complicated.

The Witness stated that he and Pon devised a code number for each zone, which was assigned a specific time to transmit coded telegrams to K-18. The frequency of telegrams from zones to the upper levels depended on the situation of each zone; areas where wars were breaking out sent communications frequently. Norng Sophang recalled that, during the period of liberation, he had to work night and day to decode telegrams. Subsequently, the workload dramatically increased to an average of 4 to 10 telegrams per day from lower levels. In contrast, telegrams from the upper authority were less frequent.

Training Center for Young Cadres. Sothearos School was also a training center where Norng Sophang taught 10-12 year-old children from various provinces to read, write, type, encode, and decode messages. The Witness said some of these children went to bases where there were only a few had decoding skills. Those who were unable to decode telegrams learned to receive and type telegrams or write and receive facsimile transmissions. Unskilled students were trained to become drivers.

3. Evacuation of Phnom Penh

Norng Sophang revealed that he received telegrams containing instructions on the arrangement of troops and weaponry to attack particular targets before the liberation of Phnom Penh. However, he did not remember any telegram on the subject of evacuation.

The Witness recalled that that his unit were not able to broadcast the “liberation” of Phnom Penh immediately on 17 April 1975. Although the KR claimed victory around 9:30 a.m., the message reached the telegram translation unit around 10:00 a.m. Since he had to prepare written documents to submit to the broadcasting unit, a two-hour delay ensued, resulting in the the public pronouncement of the “liberation” around 11:00 am. Norng Sophang said he was blamed for the belated pronouncement of the victory of Democratic Kampuchea.

4. Demeanor and Credibility

On his first day of testimony before the Trial Chamber, Norng Sophang appeared forthright and candid in his answers. He gave a detailed and clear account of the communication structure of the CPK and his work in the telegram translation unit.

III. CIVIL PARTY PARTICIPATION

In addition to his substantive testimony about the DK regime, Em Oeun testified about the process of his application for civil party status. At the end of his testimony, the Chamber asked him to elaborate on his injury and claim for reparations, but the Civil Party was unable to provide information on these important matters.

A. Civil Party Application through the Documentation Center of Cambodia (DC-Cam)

It appears that DC-Cam¹⁰ facilitated Em Oeun's civil party application. According to Em Oeun, he was searching for a venue to file his complaint for suffering the loss of his parents and relatives in DK. He said that, while accompanying a relative to DC-Cam, he met a certain Mr. Sar Sarin,¹¹ who informed him about the application process. He personally filled-in a Victim Information Form and submitted it on 25 January 2010, through DC-Cam. Two months later, in March 2010, he completed another Victim Information Form with the assistance of DC-Cam personnel, apparently because he wanted to provide additional information. This explained the second form's different writing style. Additionally, he maintained that he "cannot totally guaranty the veracity" of the second form because he could not read everything written in it. However, he admitted that he nevertheless affixed his thumbprint on the form to reaffirm his statements. He admitted that he was responsible for the errors in the second form because he was too busy earning a living to review it. He also explained that there was a two-month interval between his filings because he lived in the countryside, far from the ECCC.

B. Civil Party Claim for Reparation

Before Em Oeun concluded his testimony on Wednesday morning, the Chamber afforded him the opportunity to discuss the harm and injury he suffered during the DK regime, and to support his claim for collective and moral reparations. While Em Oeun expressed his gratitude for the ECCC's mandate to provide justice for victims, he was unable to sufficiently explain his injury and claim for reparations, stating only that:

...People could perceive that I was terrified or, perhaps, afraid to give testimony, but it was not the case. I had problem with a sore throat that I could not speak clearly. But please be reminded that I am here to tell the truth and my statement is full of truth. I filed the Civil Party Complaint to voice my concern and suffering, without which I could have never been -- I could not have been given this opportunity to do so. I would like now to proceed as follows. Dear my fellow Cambodian citizens, I am now telling the truth about what happened to me, what I experienced. My experiences were not different from those who lived through the regime...I never went to school. I had a lot of hardship and difficulties in my family. I had to support my family, and for that I did not have an opportunity to be educated. As in this statement, I wrote down the details of what I encountered--¹²

When the President reminded him to limit his response to the sufferings he experienced during the regime, the Civil Party replied that he had "no more idea" and ended his statement.

Significantly, the purpose of Civil Party action before the ECCC is twofold: (i) to participate in criminal proceedings against the Accused by supporting the Prosecution; and (ii) to seek collective and moral reparations. There was a seeming lack of preparation and consultation between Em Oeun and his counsels, as he was unable to clearly express the harm that he suffered, and the basis for his claim for reparations.

IV. LEGAL AND PROCEDURAL ISSUES

Procedural issues this week revolved around the propriety of the questions asked by the Parties during examination. The President reminded the OCP to limit questions within the first phase of trial, prohibited leading questions, and ruled on a number of objections on repetitive questions.

1. Scope of the First Phase of Trial

During the OCP's examination of Civil Party Em Oeun, the Trial Chamber reminded national Prosecutor Mr. Chan Dararasmey that under the Severance Order,¹³ religious persecution is outside the scope of the current trial segment and instructed him to change his questions. On some occasions in previous hearings, however, the Chamber had allowed questions on the treatment of religion, when asked relative to CPK policies.

2. Leading Questions

The issue of leading questions resurfaced this week during Em Oeun's examination by Khieu Samphan's international counsel Ms. Anta Guissé. While clarifying the chronology of events in the Civil Party's testimony and statements in his Victim Information Form, Guissé asked a number of close-ended questions answerable by "yes" or no." The President interrupted her examination, asking her to refrain from asking leading questions. Guissé argued that her purpose was not to lead the Civil Party, but to seek clarification. In response, the President stated that counsel's questions were confusing because they suggested a date that Em Oeun did not state in his testimony.

3. Repetitive v. Clarifying Questions

The thin line between repetitive questions and those that seek to clarify witness testimony was the subject of majority of the objections the Parties raised in this week's proceedings. The Chamber sustained a number of the Defense Teams' objections on the ground that the OCP's questions were repetitive. On Tuesday, international Prosecutor Mr. Vincent de Wilde D'Estmael objected to Pauw's question on the date of the Borei Keila political meeting, arguing that Em Oeun had already given his answer. Pauw pointed out the purpose of his examination:

Whether or not the civil party has been accurate and truthful in his earlier statements and in the information he has provided to the Chamber, that is what we are here to establish. Obviously, it is a crucial issue as to whether or not he can accurately remember dates and whether or not he can accurately remember things that have been said or that have not been said. A first glance at the applications of this civil party shows us that there is confusion as to several important dates...So, I think this crucial issue needs to be addressed; it needs to be fleshed out. In fact, that is one of the main purposes of the questioning...

The Chamber overruled the objection and allowed Pauw to seek clarification on the confusing dates mentioned by the Civil Party. The OCP raised a similar objection when Karnavas attempted to clarify Em Oeun's testimony on his medical background, arguing that the Nuon Chea Defense had already covered this matter. "I am entitled to go into it because I represent another client, and it goes to the credibility of the gentleman's entire testimony, and in fact his entire status as a civil party," Karnavas countered. The Chamber sustained the OCP's objection without explanation. The OCP also raised objections to questions on

the ground that they were repetitive during Em Oeun's examination by Khieu Samphan's counsels. Guissé argued that the Civil Party was the best person to provide the clarification they sought and that it was not up to the OCP to clarify his testimony for the Defense. The Trial Chamber overruled these objections against the Khieu Samphan Team.

Notably, some of the OCP's objections included a restatement of the Civil Party's previous answers. The Chamber simply overruled these objections and did not comment on the manner in which each objection was raised.

While a Party is permitted to explain the grounds of their objections, inclusion of parts of the testimony being clarified by other Parties in an objection may have the unwanted effect of leading the person testifying. Considering that the Chamber has been clear in its prohibition of leading questions during witness examinations, it follows that a Party should not be allowed to lead a witness incidentally, by including the answer in an objection to another Party's questions. It would be helpful for the Chamber to address this issue with clear guidelines in the event it recurs.

4. The Trial Chamber's Authority to Determine whether Questions are Repetitive or Irrelevant

In the course of Em Oeun's examination by the Defense Teams, he refused to answer questions he deemed to have been repetitive. The Chamber appropriately reminded him: "as a civil party, you are supposed to respond to all questions by the party who is putting the question." The President added that –

It is the discretion of the Chamber, through the President, to decide whether or not you should respond to the questions...so you are supposed to respond to the question.

The President's reminder is a welcome reversal of the Chamber's prior pronouncement during the testimony of the witness Mr. Suong Sikoeun. The Chamber had previously stated that that, as an "intellectual," that witness may, by himself, reserve the right to refuse to answer if he thought a question was repetitive or leading.¹⁴ However, it remains to be seen if this will apply to all individuals who appear on the stand or if a distinction exists among those who are perceived to be "intellectuals" as opposed to ordinary persons, or between witnesses and Civil Parties.

5. Right to Remain Silent of the Accused vis-à-vis that of Civil Party

During the examination by Karnavas on the subject of Em Oeun's divorce, the Civil Party showed reluctance to answer, prompting the President to instruct him to respond to the question. National CPLCL Mr. Pich Ang intervened and suggested that a Civil Party's duty to answer questions during his examination should also apply to the Accused.¹⁵

Actually, this question has already been asked, and the Civil Party himself have answered to this question. And I understand the President's direction that the Civil Party has the duty to respond to the question. And I believe that, then, the Accused should be bound by this duty, as well, to respond to the questions put by other parties.

The Chamber immediately responded through the President, thus –

Well, we understand very clearly that if the civil party exercises his right to remain silent...then we would not have summoned him to come to testify before this Court from the very beginning. So, if you exercise the right to remain silent then you should remove the names of the civil party from the list to be appearing before the Chamber so that it also saves the court time. So, you may examine this case again. I am afraid that you may be confused in terms of this procedure before us.

It did not, however, clearly delineate between the right to silence guaranteed in favor of the Accused under Article 31 of the Cambodian Constitution, Article 33 new of the ECCC Law, IR 21.1.d and Article 14 of the ICCPR, and the right of any person giving testimony (whether as a witness or as a Civil Party) to be protected against self-incrimination. Thus, while a witness or Civil Party may be directed to respond to questions, provided that there is no risk of self-incrimination, an accused person (against whom the criminal proceedings are being conducted) cannot be compelled to answer questions once he exercises his right to remain silent. This greater protection afforded the accused stems from his basic human rights: the entitlement to be presumed innocent and the right not to be compelled to confess guilt.¹⁶

6. Original Version of Documents Prevail over Translations

During Guissé's examination Em Oeun, de Wilde D'Estmael commented that counsel was relying on the French version of the Victim Information Form and pointed out that, although the statement in question was in the French version, it was not reflected in the document's English version, and she should consult the original Khmer version. Guissé answered that she took "great lengths to indicate" that she was reading from the French version, and the Civil Party was in a position to clarify the matter. The Chamber affirmed that the original Khmer version of the document prevailed over the translated versions.

V. TRIAL MANAGEMENT

This week's abbreviated hearings went smoothly, with only minor issues on trial management, court etiquette, and translation.

A. Attendance

leng Sary followed the entirety of the proceedings remotely from his holding cell. Nuon Chea participated in the proceedings in the courtroom in morning, and retired to the holding cell during the afternoon sessions. As is usual, only Khieu Samphan stayed at the courtroom the entire day during all three hearing days.

Attendance by Judges. Reserve Judge Claudia Fenz took over Judge Silvia Cartwright's seat on the Bench on Tuesday, as Judge Cartwright was absent due to a personal commitment.

Civil Party Attendance. Like previous weeks, all seats in the courtroom reserved for civil parties were occupied throughout the week.

Attendance by the Public

DATE	MORNING	AFTERNOON
Monday 27/08/12	<ul style="list-style-type: none">▪ 100 villagers from Kampong Cham Province▪ 150 high school students from Kampong Speu Province▪ 50 foreign observers	No hearing in the afternoon
Tuesday 28/08/12	200 people from Kandal Province	100 people from Takeo Province
Wednesday 29/08/12	250 people from Kandal Province	150 from Kampong Chhnang

B. Time Management

The Trial Chamber allocated only three hearing days (27-29 August) this week, on account of the hearing on the reassessment of Ieng Thirith's fitness to stand trial¹⁷ conducted on 30-31 August. There were also minor changes in schedule, with Monday's session limited to the morning sessions to give way to a trial management meeting. Tuesday and Wednesday afternoon sessions also began later than usual (2:00 pm) to accommodate Ieng Sary's health assessment.

C. Courtroom Etiquette

Courtroom exchanges this week tested some Parties' composure. De Wilde D'Estmael observed that Karnavas' tone was "aggressive" during his examination of the Civil Party. He added that, "I don't think it's appropriate in this courtroom to try and destabilize the Civil Party like this." The Trial Chamber, however, did not give any comment on this matter.

Moreover, on several occasions during the course of Em Oeun's testimony, the President reminded him to ensure that his answers were concise, relevant and non-speculative. President Nil Nonn stated –

... As Civil Party, you ought to listen carefully to the questions, and if you understand the question posed to you and you can answer as precisely as yes or no, then proceed to do so. Please do not speculate, do not respond to the questions that you are not certain you can provide the answer. So answer based on what you saw, you witnessed, experienced and, again, try to avoid speculating because, if you speculate, your statement will be less valuable.

While the repeated reminders were aimed to ensure the efficiency of trial, it seemed that, in some instances, the manner of their delivery was more severe than necessary. Although Em Oeun's answers seem confused at times, they were responsive to the questions for the most part.

D. Translation and Technical Issues

Only a few translation issues were noted this week. There was no English translation during a portion of the OCP's examination of Em Oeun on Monday's second session. Moreover, on Wednesday, Guissé's continued to elaborate on the need to ask the Civil Party to clarify his statement contained in the French version of his Victim Information Form (see IV.6 above) that was not reflected in the Khmer or English versions. The President remarked that the Chamber has already ruled on the objection, although this was not clear from the English and French translations.

E. Time Table

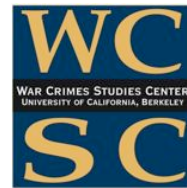
DATE	START	MORNING BREAK	LUNCH	AFTERNOON BREAK	RECESS	TOTAL HOURS IN SESSION
Monday 27/08/12	9:03	10:31-10:52	12:03	-	-	2 hours and 39 minutes
Tuesday 28/08/12	9:03	10:33-10:52	11:51-14:02	15:04-15:21	16:02	4 hours and 12 minutes
Wednesday 29/08/12	9:00	10:25-10:54	12:07-14:17	15:50	-	4 hours and 11 minutes
Average number of hours in session				3 hours 41 minutes		
Total number of hours this week				11 hours 2 minutes		
Total number of hours, days, weeks at trial				451 hours 31 minutes		
103 TRIAL DAYS OVER 30 WEEKS						

Unless specified otherwise,

- the documents cited in this report pertain to *The Case of Nuon Chea, Ieng Sary, Ieng Thirith and Khieu Samphan* before the ECCC;
- the quotes are based on the personal notes of the trial monitors during the proceedings;
- the figures in the *Public Attendance* section of the report are only approximations; and
- photos are courtesy of the ECCC.

Glossary of Terms

Case 001	<i>The Case of Kaing Guek Eav alias "Duch"</i> (Case No. 001/18-07-2007-ECCC)
Case 002	<i>The Case of Nuon Chea, Ieng Sary, Ieng Thirith and Khieu Samphan</i> (Case No. 002/19-09-2007-ECCC)
CPC	Code of Criminal Procedure of the Kingdom of Cambodia (2007)
CPK	Communist Party of Kampuchea
CPLCL	Civil Party Lead Co-Lawyer
DK	Democratic Kampuchea
ECCC	Extraordinary Chambers in the Courts of Cambodia (also referred to as the Khmer Rouge Tribunal or "KRT")
ECCC Law	Law on the Establishment of the ECCC, as amended (2004)
ERN	Evidence Reference Number (the page number of each piece of documentary evidence in the Case File)
FUNK	National United Front of Kampuchea
GRUNK	Royal Government of National Union of Kampuchea
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the former Yugoslavia
IR	Internal Rules of the ECCC Rev. 8 (2011)
KR	Khmer Rouge
OCIJ	Office of the Co-Investigating Judges
OCPC	Office of the Co-Prosecutors of the ECCC
RAK	Revolutionary Army of Kampuchea
VSS	Victims Support Section
WESU	Witness and Expert Support Unit



* AIJI is a collaborative project between the East-West Center, in Honolulu, and the War Crimes Studies Center, University of California, Berkeley. Since 2003, the two Centers have been collaborating on projects relating to the establishment of justice initiatives and capacity-building programs in the human rights sector in South-East Asia. The Program is funded by the Open Society Foundation, the Foreign Commonwealth Office of the British Embassy in Phnom Penh, and the Embassy of Switzerland in Bangkok.

This issue of **KRT TRIAL MONITOR** was authored by Mary Kristerie A. Baleva, Princess B. Principe, Sovanna Sek, Kimsan Soy, and Penelope Van Tuyl, as part of AIJI's KRT Trial Monitoring and Community Outreach Program. KRT TRIAL MONITOR reports on Case 002 are available at <www.krtmonitor.org>, and at the websites of the [East-West Center](#) and the [War Crimes Studies Center](#).

¹ Em Oeun explained that the CPK recruited people based on their affection with the revolution or the “red doctrine” and their perceived benefits to the movement. These individuals were later converted into “progressive people” if they performed their tasks well. The witness further recalled that every household were asked to contribute “a handful of rice grain placed in a bag and then put in a bucket as a contribution” to support the revolution.

² Sao Phim was the East Zone Secretary and a member of the CPK Standing Committee. Although Em Oeun said he did not know what Sao Phim did, he knew the latter was attached to Section 10 or 20. He added that the leader personally encouraged him to join the revolution “to free our class.” However, Em Oeun said that he did not know what “class” meant back then.

³ See CASE 002 KRT TRIAL MONITOR. Issue No. 33. Hearing on Evidence Week 28 (20-23 August 2012).

⁴ Em Oeun was confronted with his previous testimony that his father died in 1974 (he also gave varying years for his father's disappearance), which made it highly incongruous for the latter to be able to tell the Civil Party about Nuon Chea and Khieu Samphan's positions in DK.

⁵ In relation to enemies, the Civil Party was asked to elaborate on some terminologies used in the regime. He defined some terms as follows:

- *To smash* means to execute someone. When a person was taken away and smashed, it meant “executed.”
- *Spy network*, referred to CIA for American agents, KGB for Russian agents, and “Yuong” or the “Aggressive Yuong” for Vietnamese agents, as reportedly discussed by Nuon Chea
- *Angkar* was “comprised of several people. It can refer to those who could make a decision. So Angkar could be a body of three people or more. And at that time, the person who held the highest authority was Pol Pot.”
- *New People* referred to the 17th April People, who were under constant surveillance, as reportedly indicated by Khieu Samphan during his political speech,

⁶ Em Oeun explained:

The story in my writing is not consistent because I perhaps made mistake myself in writing it and I could not very well recollect the event, although the truth is there, the elements for the events are there, again I apologize if dates are not consistent.

⁷ Trial Chamber. Transcript of Trial Proceedings (29 August 2012). E1/117.1. lines 23-25; 1-4. 24-25.

⁸ The Chamber granted the request and the proceedings were adjourned earlier for the lunch break. The Civil Party returned after lunch to continue his testimony for the rest of the day.

⁹ Nong Sophang added that his unit received telegrams from Khieu Samphan once every 10 days. These telegrams were sent out to different regions or zones.

¹⁰ See CASE 002 KRT TRIAL MONITOR. Issue No. 10. Hearing on Evidence Week 5 (23-26 January 2012). CASE 002 KRT TRIAL MONITOR. Issue No. 11. Hearing on Evidence Week 6 (30 January – 2 February 2012). CASE 002 KRT TRIAL MONITOR. Issue No. 12. Hearing on Evidence Week 7 (6-9 February 2012).

¹¹ Em Oeun clarified that Sar Sarin was not a staff member of DC-Cam but a farmer and a driver for foreign tourists.

¹² Transcript of Trial Proceedings (29 August 2012). E1/117.1. lines 2-25; 1-7. 29-30.

¹³ Trial Chamber. Severance Order Pursuant to Internal Rule 89ter (22 September 2011). E124.

¹⁴ See CASE 002 KRT TRIAL MONITOR. Issue No. 32. Hearing on Evidence Week 27 (13-16 August 2012). 12. Trial Chamber. Transcript of Trial Proceedings (15 August 2012). E1/108.1. lines 6-16. 53. Notably, President Nil Nonn informed Mr. Suong Sikoeun that:

Mr. Witness, please be reminded that you listen to the questions. And indeed, you are an intellectual, you are a wise person. If you believe that the question is repetitive, you can reserve your right not to respond or you can ask question to the Chamber to see whether you should respond to the question. We have heard a lot of questions, some of which are repetitive and some of the questions are those that witnesses impeach the witness. And if you feel that questions that you need to answer yes or no, then you should – you should not -- if you know that the question is leading, then you can reserve your right not to respond to the question.

¹⁵ During the Opening Statements, CPLCL Pich Ang has questioned leng Sary's exercise of the right to remain silent, arguing that in choosing not to respond, an admission of guilt may be presumed. See CASE 002 KRT TRIAL MONITOR. Issue No. 5. Opening Statements (21-23 November 2011). 13-14.

¹⁶ Cryer, Robert, et al. *An Introduction to International Criminal Law and Procedure*. 2nd ed. New York: Cambridge University Press (2010). 433.

¹⁷ See CASE 002 KRT TRIAL MONITOR. Issue No. 2. Fitness to Stand Trial I (29-31 August 2011). CASE 002 KRT TRIAL MONITOR. Issue No. 4. Fitness to Stand Trial II (19-20 October 2011).



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